UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

ALEJANDRO HERRERA,

Plaintiff,
vs.

3:11-cv-00026-ECR-VPC

COA No. 12-15723

Order

CHIEF OF POLICE MICHAEL POEHLMAN, et al.,

Defendants.

Plaintiff filed a complaint pursuant to 42 U.S.C. § 1983 in January 2011. The complaint (#8) was screened by the Court and certain claims against defendant Jason Daniels were allowed to proceed. On December 23, 2011, the Court advised (#10) Plaintiff pursuant to Federal Rule of Civil Procedure 4(m) that it intended to dismiss the action as to the sole remaining defendant Jason Daniels for failure to effect service. Plaintiff was given additional time until January 22, 2012, to file proof of service within the 120-day limit set forth in Rule 4(m), or show good cause for any delay.

On February 21, 2012, Plaintiff filed a motion (#11) for an extension of time to serve the summons and complaint, which was denied (#13) because the deadline to complete service was November 23, 2011, and Plaintiff did not contact the court regarding his case until February 2012 or provide good cause for his failure to serve. As a result, Plaintiff's claims against Jason Daniels were dismissed

Plaintiff alleged in his motion filed February 21, 2012 that he is incarcerated and therefore had limited access to materials and information. However, Plaintiff was initially released from the Nevada Department of Corrections on June 2, 2011 (#9), and failed to contact the Court regarding his case for eight months.

Case 3:11-cv-00026-ECR-VPC Document 22 Filed 04/20/12 Page 2 of 2

(#14) without prejudice for failure to effect timely service under 2 Rule 4(m).

3 On March 30, 2012, Plaintiff filed a Notice of Appeal (#17) 4 regarding the dismissal (#14) of his claims without prejudice for $5 \parallel$ failure to serve. On April 4, 2012, the Court of Appeals for the 6 Ninth Circuit referred (#21) this matter to the Court for the 7 purpose of determining whether in forma pauperis status should 8 continue for this appeal or whether the appeal is frivolous or taken 9 in bad faith. See 28 U.S.C. § 1915(a)(3). The Court finds that 10 Plaintiff's appeal is frivolous for the reasons set forth above and 11 finds that **IN FORMA PAUPERIS STATUS SHOULD BE REVOKED** for purposes 12 of the appeal.

Also pending are a Motion for Request for Counsel (#15) filed 14 on March 9, 2012, and a Motion for an Order to Produce Documentation 15 (#16) requesting that the Court order that all documentation for 16 Plaintiff's case be produced by the Reno Police Department and the 17 Chief of Police Michael Poehlman. The Motion for Counsel (#15) was $18 \parallel \text{filed before the Notice of Appeal (#17)}$ and after our dismissal of 19 Plaintiff's claims against Daniels. Because this case was dismissed 20 for the reasons set forth above, Plaintiff's Motions (#15, 16) are 21 **DENIED**.

The Clerk of the Court shall transmit a copy of this order to 23 the Ninth Circuit Court of Appeals.

DATED: April 20, 2012.

28

22

24

26

27

13